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Official Notice Ex. 5

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

18 FEB 1992

8930-MER

Peninsula Communications, Inc.  
P.O. Box 103  
Homer, Alaska 99603

In re: FM Translator Stations (New)

BPFT-910513TG  
102.3 MHz, Channel 272  
Seward, Alaska

BPFT-910513TH  
104.9 Channel 285  
Seward, Alaska

Dear Applicant:

This refers to the above-referenced applications for construction permits for proposed new FM translator stations to serve Seward, Alaska and your request for waiver of various Commission rules. You are the licensee of commercial Stations KPEN-FM and KWWV-FM, Soldotna and Homer, Alaska, respectively. The proposed translators will rebroadcast the signals of these stations. You request waiver of the rules so the stations can be fed by microwave or satellite facilities. In addition, you request waiver of the 10 watt transmitter power output (TPO) limitation of the rules so the stations can operate with 100 watts TPO.

In support of your waiver request, you assert that the translator will provide a first commercial FM service to the community of Seward which has a population of 3,921. You state that Seward is a "somewhat isolated area for radio due to the mountainous terrain." You propose to feed the translators via Alascom Aurora II C-Band satellite or via the State of Alaska microwave system because "off-the-air reception is impossible due to the terrain obstructions." You assert that these translators will "bring a much needed important new service to the community.

On June 1, 1991, the revised FM translator rules became effective. See In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, ("Report and Order") 5 FCC Rcd. 7212 (1990), as modified by Order, 6 FCC Rcd. 2334 (1991). Section 74.1235 provides that translator operating power levels will be based on an effective radiated power (ERP) standard and not on the TPO standard previously used. The maximum ERP permitted pursuant to the new rules is 250 watts. We will grant your application with an authorized ERP of 250, the maximum permitted pursuant to the revised rules. Your request for waiver of the 10 watt power limitation is therefore moot.

You also request waiver to feed the proposed translator stations via satellite or microwave. Under 47 CFR § 74.1231, only noncommercial educational translators operating on the reserved band (Channels 201-220) are authorized to receive input signals via satellite or microwave, except in limited circumstances not present here. In addition, you seek waiver of Section 74.1232(d), which provides that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Thus, since you are the licensee of the proposed primary stations and the translator stations would be located outside the primary service contour of those FM stations, you are not eligible under the rule for an authorization for an FM translator station.

The Commission has, however, on a number of occasions recognized the unique nature of the communications industry in Alaska and the distinct lack of adequate communications services in the state. In Wrangell Radio Group, 75 FCC 2d 404 (1979), the Commission noted that Alaska contains numerous small, isolated, and remote villages. Many of these remote native villages are more than 500 miles apart. As a result, broadcast signals are not readily available off-the-air in most Alaskan communities, such as Seward. After careful consideration of your requests, I am of the view that the Commission's special concern for the availability of broadcast services in Alaska and the number of people who will receive full-service programming from the translator justify your waiver requests. Therefore, we think grant of your application will serve the public interest. Hence, we will grant your request for waiver of the rules, waive the appropriate rules and grant the applications.

Accordingly, for the reasons set forth above and pursuant to Section 0.283 of the Commission's Rules, your request for waiver of the Commission's Rules IS GRANTED and the requirements of Section 74.1231(b) and Section 74.1232(d) of the Commission's Rules, to the extent set forth above, ARE WAIVED and the above-referenced applications ARE GRANTED.

Sincerely,



Alan J. Schneider, Chief  
Auxiliary Services Branch  
Audio Services Division  
Mass Media Bureau

cc: Jeffrey D. Southmayd, Esq.

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 88-140

In the Matter of

Amendment of Part 74 of the                      RM-5416  
Commission's Rules Concerning FM                RM-5472  
Translator Stations

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 1993;

Released: July 28, 1993

By the Commission:

INTRODUCTION

1. On November 8, 1990, the Commission adopted a *Report and Order (Report)*, 5 FCC Rcd 7212 (1990), amending the rules governing the FM translator service. The Commission's action restructured the FM translator rules consistent with the intended purpose of providing supplementary service to areas in which direct reception of FM radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers. Before the Commission are separate petitions for reconsideration filed by the National Association of Broadcasters (NAB), John S. La Tour (La Tour), the National Translator Association (NTA), Klimek Communications Corp. (Klimek), Ed Crook-(Crook), and Doyle Brewer (Brewer).<sup>1</sup> By this *Memorandum Opinion and Order*, we affirm and further clarify the FM translator rules, including the revised standards for: ownership and financial support of translators; the definition of "major change" in translator coverage

areas; maximum power output; and interference criteria for translators. We also adopt minor amendments in the grandfathering criteria and the technical aspects of local program origination.

BACKGROUND

2. FM translators are stations that receive the signals of FM radio broadcast stations and simultaneously retransmit those signals on another frequency.<sup>2</sup> In general, the signal of the FM radio broadcast station being rebroadcast<sup>3</sup> must be received directly over-the-air at the translator site.<sup>4</sup> FM translators were authorized in 1970 as a means of providing FM service to areas and populations that were unable to receive satisfactory FM signals due to distance and intervening terrain obstructions.<sup>5</sup> The Commission restricted FM translators to operating strictly on a secondary basis and limited their service, ownership, financial support, and program origination authority.<sup>6</sup>

3. In the *Report*, we tightened or clarified several rules after concluding that the proper rule for FM translators remains as a secondary service supplementing the service of FM radio broadcast stations. We also modified several rules so that translators could better serve the public. The rule changes sought to ensure that the translator service does not adversely affect the operation of FM radio broadcast stations. First, the coverage contour of a translator providing fill-in service was defined to coincide with the coverage contour of the primary station for the respective station classes. With respect to service issues, we determined that an FM translator may not be licensed to a commercial FM broadcast station if the translator's coverage contour goes beyond the primary station's coverage contour. In "white area" situations, beyond the protected contour of any full-time aural service, we indicated that we would be favorably disposed toward requests for waivers of our rules to permit commercial primary station ownership. Similarly, we determined that commercial primary stations could financially support fill-in translators both before and after the translator commences operation. We also concluded that commercial FM broadcast stations may not provide financial support beyond technical assistance to

<sup>1</sup> Dan Hendrix and FM Technology Associates, Inc. filed petitions for reconsideration after the 30-day statutory deadline. See 47 U.S.C. § 405; 47 CFR § 1.106(f). Therefore, the issues raised by these parties are not considered in this proceeding.

<sup>2</sup> Currently, there are approximately 1,900 FM translators on-the-air. Construction permits have been granted for another 340 translators.

The current rules also recognize FM booster stations that receive, amplify and retransmit signals on the same frequencies as the FM radio broadcast station. Booster stations are authorized only to the licensee of the primary station they rebroadcast and afford a means whereby the licensee of a primary station may provide service to areas at low signal strength within its primary service contour. See 47 CFR § 74.1231(h). We have revised the FM booster rules to authorize higher power FM boosters and to permit them to rebroadcast signals received by any distribution technology the licensee deems suitable. See *Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625 (1987).

<sup>3</sup> An FM radio broadcast station whose signal is rebroadcast by an FM translator is referred to as the "primary station." See 47 CFR § 74.1201(d).

<sup>4</sup> The rules have been modified to permit licensees of noncommercial educational FM stations to use any distribution technology they deem suitable, subject to certain conditions, to transmit programming to their own translators operating on reserved channels. See *Report and Order* in MM Docket No. 86-112, 3 FCC Rcd 2146 (1988), *recon. denied in relevant part*, *Memorandum Opinion and Order* in MM Docket No. 86-112, FCC 86-216, 4 FCC Rcd 6459 (1989). Further, independently-owned FM translator stations that operate in the "fill-in" area of their NCE-FM primary stations may receive signals by using any terrestrial means. See *Second Report and Order* in MM Docket No. 86-112, 7 FCC Rcd 5546 (1992).

<sup>5</sup> See *Notice of Proposed Rule Making* in Docket No. 17159, 34 FR 761 (1969), *Report and Order* in Docket No. 17159, 20 Rad. Reg. 2d (P&F) 1538 (1970). See also 47 CFR § 74.1231(a).

<sup>6</sup> The FM translator rules are set forth at 47 CFR §§ 74.1201-74.1284.

The *Report* distinguishes between a "fill-in" translator, whose predicted coverage contour is entirely contained within the primary station's coverage contour, and an "other area" translator, whose predicted coverage contour extends beyond the primary station's coverage contour.

"other area" FM translators; however, we indicated that we will favorably view waiver requests to allow financial support for translators in "white areas." Noncommercial educational FM (NCE-FM) translators are exempt from these ownership and financial support restrictions.

4. With respect to other service issues, we permitted all translators to use one or more announcements not to exceed a total of 30 seconds per hour in order to acknowledge and solicit funds for operating expenses. We allowed commercial fill-in translators to use any terrestrial means to obtain the primary station signals, with a favorable disposition toward waiver requests for similar permission entertained for "white area" translators. We clarified that licensees may operate multiple FM translators upon showing "need" as determined on technical grounds by the quality of signal received from the intended primary station or any operating translator. We also adopted procedures to resolve mutually exclusive applications. We defined a "major change" for FM translators as any change in output frequency (output channel), or any change or increase (but not decrease) in geographic area that increases the 1 mV/m coverage area by more than 10 percent of the previously authorized 1 mV/m coverage contour. We continued to exempt FM translators from our multiple ownership rules, and also to prohibit AM-FM cross-service translating.

5. Regarding technical issues, we decided to allow all FM translators to operate on any of the 80 commercial channels with the 20 reserved noncommercial educational channels remaining available for NCE-FM translator use. We adopted a maximum ERP standard of 250 watts at low antenna heights (HAAT), and stated that additional antenna height must be traded for reduced power, implemented by new criteria that limit permissible coverage distance. We indicated that we would be favorably disposed toward waiving this rule to permit higher power (up to 250 watts ERP at any HAAT) if applicants demonstrate that the service to a greater distance reaches only a "white area." In order to apply the waiver standard to NCE-FM translators, we decided to construe any area that is not served by a full-service noncommercial educational radio station as a "white area." We clarified the standards for antennas and adopted our proposed prohibited overlap criteria for predicted interference to FM and TV Channel 6 stations. We concluded that existing stations must comply with the new service rules within three years of the effective date of these new rules, and stated that we would entertain waiver requests where service to the public would be unduly lost as a result of compliance. We also "grandfathered" existing translators that do not comply with the new technical rules unless interference problems occur or the licensee of a grandfathered translator seeks to modify its facilities.

## DISCUSSION

### General Comments

6. *Petitions.* The petitioners discuss several general issues in connection with the new FM translator rules. In particular, NTA and Klimek believe that submissions to the record regarding the abuses of the ownership and fundraising limitations by FM translators are unsupported allegations for which the Commission has not made any findings of actual violations.<sup>4</sup> NTA also claims that the new rules concerning translator use in "white areas" are contrary to the Commission's pro-competitive policies and other precedents, observing that the Commission has concluded elsewhere that a rural area is "underserved" if it receives interference-free service from less than five full-time stations.<sup>5</sup>

7. Conversely, NAB argues that the Commission should promote FM radio service through "full-service," regularly authorized FM broadcast stations, and that the purpose of FM translators should be to provide radio service to unserved areas or areas where there is a gap in authorized service. It suggests further reforms in translator ownership requirements in order to ensure that FM radio stations are not subjected to unwarranted technical interference or to "unfair competition" by FM translator stations. NAB also contends that the rules should allow additional provision of radio service where genuinely desired by the public rather than by entrepreneurs alone. NTA asserts that NAB has not demonstrated that their members have been subject to "unwarranted technical interference" or "unfair competition," and that the Commission *Report* protects full-service rural stations from competition.

8. *Discussion.* As stated in the *Report*, we find that any enhancements to FM service are most efficiently provided by full-service broadcast stations. The prior rules allowed certain uses by FM translators that contributed to the potential for abuse and to the possible detriment of the FM radio broadcast service. We conclude that the new ownership and financial support limitations adopted in the *Report* will best serve the public interest by promoting incentives for primary station development.

9. NTA asserts that the decision contradicts other Commission precedents regarding the definition of "adequately served" and "underserved" areas. However, the FM translator service is designed to function on a secondary basis in order to supplement the service provided by FM radio broadcast stations. While we have defined "adequately served" and "underserved" areas differently in other Commission regulatory contexts, our definition of "white areas" for the purposes of FM translators is more relevant to the FM translator service's role of filling gaps caused by distance and terrain barriers. The full-service broadcast station concept of an "underserved" area considers a greater number of stations because such stations are our preferred means of achieving broad distribution of radio service. Furthermore, the definition of "underserved" referenced by NTA is one used to determine which of several competing proposals for stations would, on a comparative basis, better

<sup>4</sup> For a complete discussion of the alleged abuses by FM translators in the *Report*, see 5 FCC Rcd 7212, 7215, 7216 (1990).

<sup>5</sup> NTA generally cites "the line of cases applying Section 307(b) of the Communications Act." See NTA Petition for Reconsideration, January 9, 1991, at p.10, n.9. NTA also references the

*Further Notice of Proposed Rule Making* in MM Docket No. 90-1, released December 31, 1990, where the Commission proposed requiring a number of local signals to constitute effective competition for local cable systems.

serve the public interest. Therefore, that definition has little direct relevance to the relationship between full-service and translator service. In addition, the number of entities necessary for establishing effective competition for cable services, as cited by NTA, is irrelevant to the standard applied in the aural medium. Therefore, we continue to believe that commercial primary stations should be able to own FM translators beyond the station's predicted 1 mV/m coverage contour only if the translator serves a "white area." Independent parties, of course, are permitted to establish FM translators to serve any area as desired.

### Service Issues

#### Ownership restrictions

10 *Current Rules.* The new ownership rules allow commercial FM broadcast stations to own a translator only when the translator's coverage area is entirely within the primary station's coverage contour. The rules do not allow ownership of "other area" FM translators by any entity "interested in or connected with" the licensee of a primary station.<sup>10</sup> We stated that we would view favorably waiver requests to permit commercial primary station ownership of translators providing "other-area" coverage for "white areas."

11 *Petitions.* NAB supports our decision but requests that translator service to truly "white areas" should be allowed without requiring FM radio station licensees to seek a waiver. According to NAB's proposal, primary station ownership in "white areas" would be permitted until the area obtains service from an FM broadcast station. At that point, under NAB's proposal, a translator would be required to abide by the normal "other area" requirements. NAB claims that in "white" areas, there is no fear of unfair competition to full-service FM radio stations or any threat of abuse of the rules.

12 *Discussion.* We conclude that the record does not support NAB's contention that a "white-area" exception to our ownership rule would substantially improve public service in comparison to a waiver process. We find that the waiver process more appropriately addresses the unique needs of "white areas" by permitting the Commission to engage in thorough oversight of situations where primary stations continue to own "other area" FM translators. Therefore, where a licensee establishes that service is indeed unavailable in the absence of a translator, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. We also wish to clarify that we will be especially reluctant to grant a re-

quest for authorization of an "other-area" translator unless the party requesting the authorization states affirmatively that the translator is not sought as part of a reciprocal arrangement with another primary station, whereby the primary stations seek translator authorizations in order to rebroadcast each other's signals. Such arrangements would present substantial potential for abuse and would undermine our new service rules.

#### Financial support

13 *Current Rule.* Under the new financial support rules, fill-in translators may be supported financially by the primary station before and after beginning operations. However, "other area" translators cannot receive support, either direct or indirect, from commercial primary stations or interested parties at any time except for technical assistance.<sup>11</sup> The Commission will favorably consider waiver requests for commercial FM primary station support of other area translators serving "white areas."

14 *Petitions.* La Tour states that the new financial support rules will eliminate many translator services by severely limiting sources of support.<sup>12</sup> He believes that FM translators offer many unique services to the public, including providing otherwise unavailable "narrow" formats, providing a variety of media viewpoints, helping small market radio stations, and creating efficient advertising options for smaller urban businesses. Additionally, La Tour and Klimek claim that translators do not harm other local FM services, stating that owners and management are responsible for the failure of AM and FM stations by failing to provide satisfactory formats and service to listeners.<sup>13</sup>

15 NTA asserts that the Commission action is tantamount to abolishing the translator service, as their members need some financial assistance from primary stations. NTA argues that it is impossible for the Commission to conclude that independent financial sources will be adequate. NTA observes that solicitations from area residents may cover authorization and construction costs, but, ongoing translator expenses generate "free-rider" problems, and residents will become dissatisfied with having to pay for services that are free for urban neighbors.<sup>14</sup> NTA recommends allowing primary station funding up to a \$200-per-month threshold, above which a demonstration of the underlying costs for additional operating and maintenance expenses would be required.

<sup>10</sup> Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members, and business associates. As stated in the *Report*, because of the potential for abuse, we intend this provision to be broader than our general attribution rules.

<sup>11</sup> Primary stations will be permitted to provide "technical assistance" to FM translators in other areas, to the extent of installing, repairing, or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit or license. In this regard, technical assistance is excluded from the indirect support proscription in our rule.

<sup>12</sup> Doyle Brewer also believes that many FM translators will not survive without additional financial support.

<sup>13</sup> See Exhibit 2, La Tour petition, which lists 54 AM stations that have gone dark for financial reasons though no translators operate in the area. Also see Exhibit 4, La Tour petition, a statement from high power broadcasters attesting that there are no adverse affects to their stations from translators.

<sup>14</sup> Klimek and Crook argue that additional methods of obtaining funds for actual expenses, in addition to the current 30 seconds of solicitations and announcements, should be allowed due to the unreliable nature of independent donations. Crook also suggests that the 30-second announcements may divert funds from small high-power stations that offer advertising at greater rates.

16. NAB and London Bridge favor the new financial support restrictions, commenting that the public interest is furthered if full-service radio stations are not harmed by translators. They observe that the rules still allow technical assistance to FM translators in "other areas."<sup>15</sup>

17. *Discussion.* We affirm our decision to prohibit a commercial primary station from providing direct or indirect financial support to any FM translators serving "other areas," both before and after they commence operation, except for technical assistance. Also, we will maintain a favorable disposition toward requests for waivers of this rule to permit a commercial primary station to support any translator providing service to "white areas." We continue to believe that the revised financial support rule is necessary to ensure that translators owned by a commercial station seeking to increase its coverage are used only to provide FM service to areas and populations that are unable to receive satisfactory FM signals due to distance or intervening terrain barriers.

18. In the *Report*, the Commission dismissed La Tour's arguments favoring only limited constraints upon financial support for FM translators.<sup>16</sup> La Tour's petition for reconsideration presents no new arguments. As noted in the *Report*, we believe that an expanded translator service could provide disincentives for the establishment of broadcast stations, relative to translator facilities, since translators have no local service obligations and generally operate at significantly lower cost. While La Tour correctly notes that translators could provide small market stations with a means of distributing their signals in larger markets, and a means of distributing additional innovative programming services, we note that these goals are also attainable through acquisition of or initiation of service by full-service broadcast stations. Therefore, we affirm our prior determination that the new rules will help ensure that FM translators remain limited to a supplementary role so as not to discourage full-service radio broadcast station development of additional formats and service to the public.

19. We also reject NTA's proposal for a \$200 per month limit on acceptable financial support combined with reporting requirements. NTA's proposal would create a substantial burden for both licensees and the Commission due to the additional oversight and review necessitated by such filings. In response to NTA's concern that listeners may not contribute funds despite benefiting from the translator's service, we emphasize that the new rules provide for waivers of the "grandfathering" period upon a showing by the licensee that the public would lose service as a result of compliance with the rules. NTA's alternative also overlooks the fundamental enforcement problem associated with a

primary station's "indirect support" to FM translators. Given that many of the potential abuses by translators would arguably occur by primary stations providing support in the form of "indirect services", we conclude that the public is better served by the limitations established in the new rules. In addition, we reiterate that communities seeking additional service and formats will have the opportunity to fund FM translator service under the new rule through their independent charitable support.

20. We stated in the *Report* that "technical assistance" by primary stations will be excepted from the indirect financial support proscription.<sup>17</sup> We affirm this decision and clarify that "technical support" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Such support does not include the supply of equipment or direct funding for the translator's discretionary use. We also reiterate that technical assistance by the primary station should occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.<sup>18</sup> We continue to believe that these maintenance expenses may become prohibitive given the limited financial resources of many FM translators, and that limited technical assistance by the primary station will enable translators to continue to provide valuable service to the public.

#### Fundraising by translators

21. *Current Rule.* The new fundraising rules permit FM translators to air one or more fundraising announcements or advertisements per hour totalling 30 seconds in length.

22. *Petitions.* NAB asserts that fundraising announcements should be restricted to "enhanced underwriting"-type messages on the grounds that full service stations should not be subjected to translator activities that detract from their local and public service operations.<sup>19</sup> NAB is further concerned that multiple announcements per hour will cause frequent interruptions in primary station programs and create unwarranted incentives for translator operators to behave as commercial broadcasters.<sup>20</sup> London Bridge supports NAB and objects that the new rules allow profit-making by translator licensees, particularly through incentives to advertisers provided by primary stations as "indirect support" to translators. Specifically, London Bridge suggests that the rules would allow a primary station to offer an advertiser a reduced rate for an advertisement on the primary station in return for providing financial support to the translator. In response, La Tour comments that 30-second fundraising

<sup>15</sup> London Bridge expresses concern that the new rules permit primary stations to provide maintenance and repair service for translators. London Bridge states that as a result, the translator "entrepreneurs" who previously received monthly fees from primary stations for maintenance and repair may simply be disguised as salaried engineers under the new rules.

<sup>16</sup> See 5 FCC Rcd 7217 (1990) at para. 31.

<sup>17</sup> See 5 FCC Rcd 7217 (1990), n.36. We note that the attribution rules for the ownership of FM translators should preclude the potential abuses of "technical assistance" raised by London Bridge. See 47 CFR § 74.1232 (d).

<sup>18</sup> The amended rules are set forth in Appendix B.

<sup>19</sup> NAB also requests that the Commission reconsider its decision not to include in the new rules the guideline that translators "may not make fundraising announcements for the

purpose of making a profit." We note that essentially the same standard was set forth in the *Guide to FM Translator Rules and Policies*, 55 FR 2d (P&T) 1248 (1994), and that this standard is superseded by the new rules. When existing translators become subject to the new rules in three years, such a requirement will become unnecessary. However, the *Report* retained the Policy Statement's guideline that prevents fundraising announcements for profit for three years, a period coinciding with the "grandfathering" period for the service rules.

<sup>20</sup> Arizona Broadcasters Association filed *ex parte* comments on April 8, 1991, which also advocate stronger content restrictions on the solicitation of funds by translator operators.



announcements each hour will not damage radio services, and indeed are too limited to provide a reliable source of funding to translator operators.

23. *Discussion.* We reaffirm the rule limiting on-air fundraising activities by FM translators to 30 seconds of announcements within an hour. We continue to believe that the 30-second period is an adequate opportunity for FM translators to acknowledge contributions as well as to solicit funds from their listeners as necessary. We also affirm our decision in the *Report* that the solicitations or announcements may be split during the hour. We continue to believe that it is unnecessarily restrictive to regulate how translators should allocate their 30 seconds of announcements within an hour.

24. We deny NAB's request that announcements should be restricted in form to "enhanced underwriting" messages. In order to encourage donations from independent sources, translators must be able to provide some information about their contributors. We find it unnecessary to limit the content of these brief announcements. Also, while the new rules no longer require FM translator licensees to operate non-profit facilities, the record before us does not indicate that translators will be able to earn substantial profits. In addition, we find that the scenario raised by London Bridge — under which a primary station's advertisers could be enticed to provide financial support to a translator in return for reduced advertising rates — would violate the "indirect support" prohibition.

#### Local program origination authority

25. *Current Rule.* In the *Report*, the Commission retained its limitation on local program origination to 30 seconds per hour for fundraising and acknowledgement of contributions.<sup>21</sup> Emergency warnings of danger are limited in time and frequency to that necessary to protect life and property. Translators owned by parties other than the primary station must obtain written consent for the rebroadcast of the FM radio broadcast station signals.<sup>22</sup> We also retained the rule that prohibits the retransmission on translators of signals other than those emanating from FM full-service or translator stations.<sup>23</sup>

26. *Petitions.* La Tour states that translators can provide innovative programming by retransmitting the aural portions of cable services on the FM dial (i.e., C-Span, ESPN, CNN, and the Weather Channel). He believes that this would improve public safety while enhancing programming options on the FM band. Also, a network of translators could be set up to rebroadcast the audio portion of the Weather Channel up and down every interstate system in the country and could relay a warning message as soon as a hazardous situation is discovered. In opposition, NAB comments that program origination by FM translators goes against the basic, secondary role of FM translators and threatens the provision of issue-responsive programming by local, full-service stations. NAB argues that La Tour essentially recommends allowing FM translators to develop into a low power radio service.

27. *Discussion.* We reaffirm the rules prohibiting program origination by all translators, commercial and NCE-FM, with the exception of acknowledgements or solicitations of financial support as well as emergency warnings of danger.<sup>24</sup> In the *Report*, we emphasized that the proper role of FM translators is to provide secondary service to areas where direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstructions. We remain committed to providing FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient full-service broadcast station development. Therefore, we intend to maintain the existing programming authority distinctions between FM broadcast stations and translator services.

28. We note that the rules concerning the permissible sources of input channels for FM translators are not intended to restrict programming content. Rather, where there is sufficient community interest, the rules permit translators to rebroadcast any programming broadcast by a primary FM station, thereby affording translators an opportunity to import programming formats otherwise unavailable. Thus, rebroadcasts of the aural portion of a TV or cable signal would be permitted if such a signal were first rebroadcast by a full-service FM station, but not solely by a translator. Once again, we believe that it is necessary to distinguish between the services provided by low cost translators and FM radio broadcast stations due to our preference to provide service through more efficient radio broadcast stations.

#### Signal delivery

29. *Current Rule.* The *Report* provides that fill-in translators of commercial primary stations may now use any terrestrial delivery means to obtain the signal from the primary station. "Other-area" translators, however, may only use off-air delivery, although we indicated that we will favorably consider waiver requests to permit signal delivery by any terrestrial means for translators serving "white areas."

30. *Petitions.* La Tour's petition for reconsideration argues that all translators should be permitted to use a dependable method of signal delivery so as to avoid the static found in over-the-air methods. It asserts that "other-area" translators are, by definition, located many miles from the primary station, such that even high gain antennas mounted high above the average terrain cannot overcome signal fades and interference. La Tour claims that if NCE-FM translators may use all forms of alternative signal delivery technologies to provide a higher quality signal, then commercial translators (since they use the same principles of reception and transmission) should have access to the same signal delivery technologies. Also, La Tour contends that translators located 70 to 80 miles away from the primary station need alternate signal delivery methods more than "fill-in" translators since they have a more difficult time receiving the signal.

<sup>21</sup> 47 CFR § 74.1231(g).

<sup>22</sup> 47 CFR § 74.1234(b), 47 U.S.C. § 325(a).

<sup>23</sup> 47 CFR §§ 74.1231(b), 74.1234(c).

<sup>24</sup> Section 74.1231(f) of the rules specifies that a locally-originated signal be made automatically by means of a "time switch." See 47 CFR § 74.1231(f). On further consideration, we conclude that allowing alternate means of control is warranted

in order to alleviate the possible inconveniences created by timing errors when translators must rely solely upon the automatic switches. Therefore, the Commission will allow translators to use any otherwise permissible automatic means of production when originating local signals. We will exclude manual control of the signal in order to facilitate compliance with the 30-second time limitation for fundraising announcements.

31. *Discussion.* We believe that any further extension of signal delivery alternatives for "other area" translators would be inconsistent with the secondary role of FM translators in the commercial context. The *Report* extended permission for fill-in translators to use alternative signal delivery on the grounds that other terrestrial means would conceivably be necessary to circumvent the terrain or other barriers that prevent otherwise expected over-the-air delivery of an FM signal to the translator.<sup>25</sup> As for "other-area" translators, however, there is no similar expectation, especially at large distances, such as 70 to 80 miles from the station. We continue to believe that, to the extent that translator service is desirable beyond a station's predicted service contour, the over-the-air signal will generally be suitable for rebroadcast, although certain white-area situations may warrant a waiver to permit alternative signal delivery methods. Moreover, we believe that the signal delivery provisions in the *Report* will eliminate disincentives for service by full-service radio broadcast stations in instances where sufficient community interest exists for additional services, but where the existence of "other area" translators financed by primary stations would work to limit the economic viability of such stations. Furthermore, we do not believe that allowing alternative signal delivery for "other area" NCE translators owned by their primary stations requires that we do the same for commercial translators. We have long recognized that NCE-FM and commercial licensees participate in fundamentally different broadcast services. Therefore, we continue to believe that we are not required to apply the same standards for signal delivery to NCE-FM and commercial licensees.

#### Definition of major change

32. *Current Rule.* A "major change" is defined in the *Report* as occurring due to any change in output frequency (output channel), or any change or increase (but not decrease) in 1 mV/m coverage area of more than 10 percent of the previously authorized coverage contour.

33. *Petitions.* NAB urges that where a translator changes the primary station being rebroadcast, that change should be subject to full public scrutiny as a "major change." NAB claims that translators often significantly shift their technical facilities shortly after authorization, and also frequently change the primary station received. Furthermore, NAB believes that "other area" translators, under our new rules, will seek to substitute a primary station whose protected contour is sufficiently proximate that it would qualify as a "fill-in" translator, and that such changes should be reviewed to ensure that the change does, in fact, result in "fill-in" service. La Tour comments that if a translator wants to change primary stations so that the translator's coverage is completely within the primary coverage area of the new primary station, such changes are consistent with the new rules and should not be deemed a "major change."

34. La Tour argues that the 10-percent threshold is very low and will lead to abusive petitions. He claims that conditions prompting a tower change will trigger the major

change process which could drag out for years in costly administrative proceedings or, at best, a minimum of 90 days. La Tour also argues that potential interference from changes in the coverage area greater than 10% should not be a concern, because if any change in an operating facility causes interference to a regularly used signal, the Commission can suspend the operation of the translator.

35. *Discussion.* We continue to believe that our definition for "major change" appropriately covers those changes in technical parameters and coverage areas that are significant. The standard also allows licensees sufficient flexibility to make minor technical and facility changes that cause negligible changes in signal patterns. In addition, we believe that changes in coverage areas in excess of 10% could have significant public interest implications. For example, FM translators have an obligation to protect audiences beyond the defined service areas of full service FM stations, and such information is not available in an FM translator application itself. The greater the change in the translator's coverage area, the higher the risk that the audience of a full service station will be affected. Accordingly, changes in coverage area in excess of 10% are appropriately considered "major changes."

36. We also reject NAB's request to include a change in input channel or primary station as a major change criterion. A change in the input channel does not alter a translator's technical parameters because the coverage area, output channel, and potential for creating interference remain identical. While a change in the output frequency is a significant technical change, the input channel is essentially a programming content decision that is not significant with respect to the public interest. Furthermore, to the extent that a translator changes its primary station in a manner that does not clearly comply with our rules, we note that the matter is more appropriately a question for our enforcement function rather than the application process.

#### Technical Issues

##### Maximum power output

37. *Current Rule.* As decided in the *Report*, an FM translator's maximum power output will be limited to 250 watts ERP. In addition, the coverage contour of fill-in translators may not go beyond the coverage contour of the primary station. "Other-area" translators will be restricted to power and height combinations that yield a distance to the translator's coverage contour that does not exceed 7 km in Zone 1-A<sup>26</sup> and east of the Mississippi River, and 13 km elsewhere. The Commission will be favorably disposed toward waiving this rule to permit higher power up to 250 watts at any antenna height if the service to a greater distance reaches only a "white area."<sup>27</sup>

<sup>25</sup> A letter from EW Bundy questions the signal delivery authority distinctions between NCE-FM and commercial translators, as well as the three year transition as part of the decision in MM Docket No. 86-112. (See *Memorandum Opinion and Order*, in MM Docket No. 86-112, 4 FCC Rcd 6459 (1989)). Bundy claims that these decisions deny local public radio stations the protection retained for local commercial stations.

However, this issue is not germane to MM Docket No. 88-140. Mr. Bundy's letter has been entered into the record of MM Docket No. 86-112.

<sup>26</sup> Zone 1-A consists of Puerto Rico, the Virgin Islands, and the portion of California located south of the fortieth parallel. See 47 CFR § 73.205(b).

<sup>27</sup> For NCE-FM translator applications, white areas are defined

38. *Petitions.* La Tour, Brewer, and Crook state that the ERP standard will produce a weak signal for the listening public without justification by the Commission. They argue that with the newly adopted interference standards, even 1 kW power would not cause interference, and that the Commission should adopt the 1 kW ERP limit with primary coverage at 16 km as proposed in the *NPRM*. Similarly, Klimek states that under the new maximum power output rule it is impossible for translators to be effective in states with widely varying terrain. Klimek offers an example that, in western states, translators are located on mountain tops in order to avoid terrain barriers that would prevent their signal from reaching the communities they wish to serve. NTA adds that the new rules will require multiple translators to serve rural populations that do not conform to a 16 km radius.

39. NAB supports the Commission's ruling on maximum power output and comments that the requests for a higher ERP limit and less restrictive contour distances are contrary to the secondary nature of FM translators. Accordingly, NAB advocates ERP standards which are established at the minimum necessary level for signal coverage.

40. *Discussion.* As stated in the *Report*, the Commission's new maximum power limits recognized that translators must deliver broadcast signals to small and distant service areas with the minimum necessary power. However, we observed that many translators were already constructed more than 16 km from the area of service and utilized power output in excess of 250 watts. As a result, the 250 watt maximum ERP standard and the grandfathering provisions discussed below will promote the fundamental purpose of FM translators while also accommodating most existing authorized facilities. Although we originally proposed a 1 kW ERP limit with a distance to the coverage contour not to exceed 16 km, we observed that most licensees are already in compliance with the lower adopted power standard as well as the 7 km and 13 km distances to coverage contours. For these reasons, the Commission affirms its decision not to expand the maximum power limits so as not to contradict the intended purpose of the FM translator service. We continue to believe that service similar to large or high-power translator stations should be provided by full-service stations. Nonetheless, we emphasize that existing facilities that are not in compliance with the new maximum power standards are grandfathered until actual interference occurs or licensees propose to make changes in their facilities.<sup>24</sup>

#### Interference criteria

41. *Current Rule.* In the *Report*, we adopted a contour overlap method for predicting interference with translator applicants permitted to show that interference will in fact

not occur. We will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap. This revised method for predicting interference incorporates greater processing flexibility through population and terrain exceptions. Complaints of actual interference must be resolved by the FM translator.

42. *Petitions.* NAB states that the Commission should require FM translator applicants to include exhibits to show compliance with the interference standards because: (1) the exhibits will initiate recognition of the new rules and interference standards and thus lead to better compliance, and (2) the new rules allow applicants to determine the appropriate level of supporting analysis which shifts the burden of demonstrating compliance or non-compliance to the FCC and existing broadcasters. NAB also observes that the new availability of 80 commercial channels for translator operations, as well as a 250 watt maximum ERP, will increase the importance of predicted interference protection standards in order to prevent actual instances of interference. La Tour comments that even if a translator operator could disguise interference at the application level, the actual operations of an interfering translator would be difficult to conceal, and that the "comprehensive exhibits" advocated by NAB will greatly increase the cost of translator applications.

43. *Discussion.* We reject NAB's suggestion to require applicants to include exhibits demonstrating compliance with our interference limits because it would create an unnecessary burden on applicants. We find that NAB's proposal is unnecessary because we will continue to perform interference studies to determine whether applicants comply with the new rules. We also recognize that due to their limited financial and technical means, many FM translator licensees may require the flexibility of determining compliance with the interference rules without detailed analyses as part of their applications. Due to the secondary nature of the service, we reiterate that FM translator licensees must adjust their operations following instances of actual interference.<sup>25</sup>

#### Other Matters

##### Grandfathering criteria for existing translators

44. *Current Rules.* Licensees authorized prior to June 1, 1991<sup>26</sup> may continue to operate without conforming with the new technical rules provided that no actual interference occurs and the translator does not propose to modify its facilities.<sup>27</sup> If actual interference develops or the

as "any area that is not served by a full-service public radio station." See 5 FCC Red 7227 (1991). By using the term "public radio," we did not intend to exclude from the relevant stations those noncommercial stations not affiliated with the National Public Radio or American Public Radio networks.

<sup>24</sup> See para. 48, *infra*.

<sup>25</sup> We also note that Section 74.1237 of the rules regarding antenna location is amended to reflect that the limitation applies only to translators owned by commercial FM radio stations in order to remain consistent with the ownership and financial support restrictions. See 5 FCC Red 7215 (1991).

<sup>26</sup> The amended rules governing the FM translator service became effective on June 1, 1991. See Order, 47 FR 23024 (May

22, 1991). Applications pending as of June 1, 1991 can be granted only under the terms of the new service and technical requirements and must be amended to conform with the new rules. See *Report*, 5 FCC Red 7233 (1991). We allowed pending applicants 60 days to file amendments demonstrating compliance with the new rules. We now believe, however, that this 60-day period was too restrictive, and we will allow pending applicants to file conforming amendments upon notification by the processing staff. Applicants must use a revised FCC Form 319.

<sup>27</sup> See 47 CFR § 74.1203 for "actual" interference standards governing FM translators with respect to the direct reception of off-the-air signals by the public.

translator seeks to modify facilities, translators must satisfy the new technical standards concerning interference protection for FM broadcast and TV channel 6 stations, as well as the new power limitations.<sup>32</sup> With respect to the service rules, compliance by existing FM translators will be required in three years, and requests for waivers will be considered if licensees show that the public would unduly lose service as a result of compliance with the new rules.

45. *Peunions*. NAB, supported by ABA and London Bridge, requests a one-year grandfathering period for compliance with the new service rules, starting from the December 10, 1990 publication of the *Report* in the *Federal Register*. They contend that the three-year grandfathering provision, as well as a possible waiver, will lead to further abuses by translators which may eliminate many local radio stations. NAB also claims that translators should be able to adapt to the new rules within a few months. La Tour opposes a reduced grandfathering period since the Commission noted that rapid compliance with the new rules could cause a "withdrawal" of FM translator service from areas currently served, "a result contrary to the public interest."

46. *Discussion*. In adopting the *Report's* three-year grandfathering provision for compliance with the service rules, we emphasized the limited resources of many FM translator licensees and the burden that could result if we were to require accelerated compliance with the new financial support standard. We therefore deny NAB's request to reduce the grandfathering period for the service rules based upon our desire to promote an orderly transition to the new rules and to avoid an unnecessary disruption of service to the public. We also conclude that an indefinite grandfathering period would undermine the effectiveness of the new rules in returning the FM translator service to its original secondary role. Instead, we continue to believe that the *Report's* provision for extended waivers will adequately prevent the public from unduly losing service in unique circumstances.

47. We wish to clarify that "other-area" translators that are temporarily "grandfathered" with respect to the ownership and financial support provisions of the new rules will not be required to comply with the new service rules for the remainder of the three-year period if the translator changes its primary station. We believe that a change in the primary station will reflect the preferences of local audiences in the community without altering the technical aspects of a translator's operation, and should ensure that translators constructed based on expectations formed under our prior rules will have sufficient time to adjust their operations.

48. We also amend the grandfathering provision concerning the technical rules by specifying that FM translators authorized prior to the effective date of the rules must comply with the full scope of the technical requirements when they implement a "major change" modification or if they cause interference. Such FM translators seeking "mi-

nor changes" may continue to operate without complying with the technical rules provided that they satisfy the standards for actual interference.<sup>33</sup> We have affirmed that translators proposing modifications that would not change or increase the 1 mV/m coverage area by more than 10 percent are not subject to the "major change" review process. Similarly, we believe that it would be unduly onerous to require compliance with all the technical rules in instances where modifications do not significantly increase the translator's coverage area.<sup>34</sup>

#### IF Separation Requirements

49. We are amending Section 74.1204(g) of our rules to state standards for the treatment of FM translators based on ERP, so that they are consistent with the minimum permissible power level for Class A FM stations, and the treatment of other secondary FM services.<sup>35</sup> Translators operating with less than 100 watts ERP will be treated as Class D stations and will not be subject to IF separation requirements.<sup>36</sup> We believe that adjusting this requirement to this extent, given the totality of the safeguards adopted in this proceeding, is consistent with our fundamental concern with preventing interference, and we emphasize that the secondary nature of the FM translator service will require correction of any actual interference.

#### Directional Antennas

50. The *Report* adopted a contour protection method for protecting existing translator licensees against potential interference. In order to implement this approach, we are entering the technical parameters of each FM translator station into the Commission's data base. We have found that many licensees and permittees have inadequate information currently on file for our use. Accordingly, we are requesting by letter that such licensees furnish data necessary to implement the *Report*. In order to ensure that a licensee's failure to provide the requested information does not unduly hamper the functioning of our licensing process, we are, on our own motion, amending Section 74.1235 to establish specific mileage contours consistent with a translator station's power for those licensees that fail to submit the requested data. We note that this procedure is similar to that followed in updating our data bases for low-power television and TV translators,<sup>37</sup> and we believe that it will enable us to effectively implement changes in our rules that affect existing translator licensees. We also do not believe that public comment would serve a useful purpose because this action is a minor and non-controversial process to facilitate our efforts to gather information. However, we recognize that licensees may fail to submit the requested data and later conclude that the hypothetical values applied for their facility are unacceptable. In such instances, licensees may submit corrected figures for our use in protecting translators against potential interference.

<sup>32</sup> See 47 CFR §§ 74.1204(j), 74.1205(d), and 74.1235(j).

<sup>33</sup> See revised Sections 74.1204(j), 74.1205(d), and 74.1235(j) in Appendix B.

<sup>34</sup> In this regard, we also correct the text of the *Report*, which states in paragraph 142 that FM translators causing interference or proposing to modify facilities must comply with only the predicted interference standards in Section 74.1204, rather than

Sections 74.1204, 74.1205, and 74.1235 of the rules.

<sup>35</sup> See *Order*, FCC 91-317, 6 FCC Rcd 4441 (1991), reconsideration pending.

<sup>36</sup> See 47 CFR § 74.1204(g).

<sup>37</sup> See *Memorandum Opinion and Order* in BC Docket No. 78-253, 53 FR 2d 1267, 1240 (1983).

**TV Channel 6 Interference**

51. In the *Report*, we adopted contour overlap standards to protect TV Channel 6 operations from FM translator operations. These standards were generally consistent with the NCE-FM broadcast station rules. However, Section 73.525(a) of the NCE-FM broadcast station rules permits NCE-FM broadcast applicants whose stations would potentially affect TV Channel 6 broadcast operations to file written agreements with each relevant TV Channel 6 broadcast station concurring with the proposed facilities. The new rule for translators lacked such a provision but we find no reason to omit a similar provision from the translator rules. On our own motion, we will add a provision to Section 74.1205 of the rules to indicate that we will accept FM translator applications that are accompanied by written agreements with all relevant TV Channel 6 broadcast station licensees or permittees.

**CONCLUSION**

52. By this *Memorandum Opinion and Order*, we have affirmed and further clarified the FM translator rules, including the revised standards for: ownership and financial support of translators; the definition of "major change" in translator coverage areas; and maximum power output. We have found that an expanded FM translator service could potentially redistribute revenues away from FM radio broadcast stations and limit the overall level of service to the public. We have amended aspects of the rules in order to facilitate the technical operation of FM translators. We have also denied NAB's petition for partial reconsideration seeking to tighten several rules, including a reduction of the grandfathering provision for service requirements to one year. We continue to believe that sufficient evidence for more stringent compliance standards is lacking and we desire to avoid an unnecessary loss of service to the public. Conversely, we believe that our decisions in the *Report* will allow for an orderly transition to the new rules while returning the FM translator service to its intended supplementary role.

**PROCEDURAL MATTERS**

53. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the *Report* detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substantive changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

54. Accordingly, IT IS ORDERED that the Petitions for Reconsideration filed by the National Association of Broadcasters, the National Translator Association, Ed Crook, Klimek Communications Corporation, John S. La Tour, J and J Broadcasting, and Power du Pree Broadcasting Corporation, and Doyle Brewer ARE DENIED.

55. IT IS FURTHER ORDERED THAT pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, Part 74 of the Commission's rules and regulations ARE AMENDED as set forth in Appendix B below, EFFECTIVE 30 days after publication in Federal Register.

56. Further information on this proceeding may be obtained by contacting Alan Schneider, Mass Media Bureau, (202) 634-6307.

**FEDERAL COMMUNICATIONS COMMISSION**

William F. Caton  
Acting Secretary

**APPENDIX A****List of Petitioners and Responses****Petitioners**

1. National Translator Association (NTA)
2. Ed Crook
3. Klimek Communications Corporation
4. National Association of Broadcasters (NAB)
5. John S. La Tour, J & J Broadcasting, and Power du Pree Broadcasting Corp.
6. Doyle Brewer

**Late-filed Petitioners**

1. Dan Hendrix
2. FM technology Associates

**Oppositions**

1. Klimek Communications Corporation
2. John S. La Tour, J & J Broadcasting, and Power du Pree Broadcasting Corp.
3. London Bridge Broadcasting
4. NAB

**Reply to Oppositions**

1. NAB
2. NTA

**APPENDIX B****Rule Changes**

Title 47 CFR Part 74 is amended as follows:

PART 74 - Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303

2. Section 74.1204 is amended by revising paragraphs (g) and (j) to read as follows:

**§ 74.1204 Protection of FM broadcast stations and FM translators.**

\*\*\*\*\*

(g) An application for an FM translator or an FM booster station that is 53 or 54 channels removed from an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distances set out in Section 73.207 of this chapter. For purposes of determining compliance with Section 73.207 of this chapter, translator stations will be treated as Class A stations and booster stations will be treated the same as their FM radio broadcast station equivalents. FM radio broadcast station equivalents will be determined in accordance with Sections 73.210 and 73.211 of this chapter, based on the booster station's ERP and HAAT. Provided, however, that FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.

\*\*\*\*\*

(j) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

3 Section 74.1205 is amended by adding an introductory paragraph and revising paragraph (d) to read as follows:

**§ 74.1205 Protection of Channel 6 TV broadcast stations.**

The provisions of this section apply to all applications for construction permits for new or modified facilities for a noncommercial educational FM translator station on Channels 201-220, unless the application is accompanied by a written agreement between the NCE-FM translator applicant and each affected TV Channel 6 broadcast station licensee or permittee concurring with the proposed NCE-FM translator facility.

\*\*\*\*\*

(d) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

4. Section 74.1231 is amended by revising paragraph (f) to read as follows:

**§ 74.1231 Purpose and permissible service**

\*\*\*\*\*

(f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements. The radio frequency signals shall be on the same channel as the normally used off-the-air signal being rebroadcast. Connection of the locally generated signals shall be made by any automatic means when transmitting originations concerning financial support. The connections for emergency transmissions may be made manually. The apparatus used to generate the local signal that is used to modulate the FM translator must be capable of producing an aural signal which will provide acceptable reception on FM receivers designed for the transmission standards employed by FM broadcast stations.

\*\*\*\*\*

5 Section 74.1232 is amended by adding two sentences to paragraph (d), three sentences to paragraph (e) and an accompanying Note to paragraph (e) to read as follows:

**§ 74.1232 Eligibility and licensing requirements.**

\*\*\*\*\*

(d) \* \* \* An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) \* \* \* Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. FM translator stations in operation prior to June 1, 1991 may continue to receive contributions or support from a commercial FM radio broadcast station for the operation and maintenance of the translator station until June 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

Note "Technical assistance" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Conversely, such support must not include the supply of equipment or direct funding for the translator's discretionary use. "Technical assistance" must occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.

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6. Section 74.1235 is amended by adding a note to paragraph (i) and revising paragraph (j) to read as follows:

§ 74.1235 Power limitations and antenna systems.

\*\*\*\*\*

(i) \*\*\*

Note: Existing licensees and permittees that do not furnish data sufficient to calculate the contours in conformance with § 74.1204 will be assigned protected contours having the following radii:

Up to 10 watts -- 1 mile (1.6 km) from transmitter site

Up to 100 watts -- 2 miles (3.2 km) from transmitter site

Up to 250 watts -- 4 miles (6.5 km) from transmitter site

(j) FM translator stations authorized prior to June 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, *provided* that operation is in conformance with § 74.1203 regarding interference. Applications for major changes in FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

7. Section 74.1237 is amended by revising paragraph (d) to read as follows:

§ 74.1237 Antenna location.

\*\*\*\*\*

(d) The transmitting antenna of an FM booster station shall be located within the protected contour of its primary station, subject to Note, Section 74.1231 (h). The transmitting antenna of a commonly owned commercial FM translator station shall be located within the protected contour of its commercial primary FM station.

7



Official  
Notice  
Ex 7

**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D.C. 20554**

MAR 4 1996

IN REPLY REFER TO:  
1800B4-AJS

Peninsula Communications, Inc.  
David F. Becker, President  
P.O. Box 109  
Homer, Alaska 99603-0109

In re: FM Translator Stations  
K257DB, Anchor Point/Seldovia  
K265CK and K292ED, Kachemak City  
K272CN and K285DU, Homer  
K272DG and K285EG, Seward  
K274AB and K285AA, Kodiak  
K283AB, Soldotna  
K285EF, Kenai

Dear Licensee:

An examination of Peninsula's recently filed renewal applications indicate that Peninsula may be in violation of the Commission's revised ownership and support rules governing commercial FM translator stations. See 47 C.F.R. Secs. 74.1232(d) and (e). If this is in fact the case, Peninsula must immediately divest itself of its ownership and support interests in all non-complying stations.

More specifically, from Peninsula's responses to questions 5(a) and (b)<sup>1</sup> of the license renewal applications for the above referenced FM translator stations, it appears that Peninsula is serving areas outside of the primary contour service areas of the stations being rebroadcast. Such service is impermissible unless: (1) these translator stations are providing fill-in service; (2) are providing first aural broadcast service to "white areas;" or (3) are providing needed

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<sup>1</sup> Questions 5(a) and (b) were added to the license renewal application form to help verify compliance with revised rule Sections 74.1232(d) and (e). These sections provide generally that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station being rebroadcast will not be granted to or cannot be supported by the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorizations will not be granted to and cannot be supported by any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates.

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service to small, isolated Alaskan communities otherwise deprived of aural broadcast services.<sup>2</sup>

If Peninsula seeks to continue to own and operate these translators in its own right, it must submit a showing, supported by appropriate documentation, that one of the above three circumstances exist. Otherwise, Peninsula must divest itself of these stations and, in fact, should have done so by June 1, 1994. As background information to this requirement, Peninsula is directed to refer to the relevant Commission documents: Notice of Inquiry In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 3 FCC Rcd 3664 (1988); Report and Order In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990) ("Report and Order"), modified, 6 FCC Rcd 2334 (1991), recon. denied, 8 FCC Rcd 5093 (1993).

If Peninsula intends to seek a waiver of Section 74.1232(d) in order to serve white areas, it must first demonstrate that the proposed areas of service currently receive no other radio signals. In this regard, Peninsula should provide a clearly labelled, composite map for each translator station. Each composite map should reflect the authorized service contour of the existing translator station and its location. This "Authorized Contour" should be based on the MERP and corresponding HAAT set forth in Sections 74.1235(b)(1) and (2) of the rules. The composite map should also reflect a "Proposed Contour," reflective of the area Peninsula is currently actually serving. Finally, the composite map should reflect the 1 mV/m contours of all FM broadcast stations and the appropriate groundwave signal strength contours (Section 73.182(d) of the Commission's Rules) of all AM broadcast stations located within 25 miles (40 kilometers) of Peninsula's existing transmitter site, with each contour identified by call sign and city.

If Peninsula intends to seek a waiver pursuant to our Alaska exception policy, it must demonstrate anew, for each translator, that the translator is needed to provide service to small, isolated communities.<sup>3</sup> It must show the areas and communities being served, the square

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<sup>2</sup> The Commission has on a number of occasions recognized the unique nature of the communications industry in Alaska and the distinct lack of adequate communication services in the state. In Wrangell-Radio Group, 75 FCC 2d 404 (1979), the Commission granted applications proposing satellite-fed TV translators in seven Alaska communities. The Commission based its decision on the need for additional over-the-air broadcast signals to serve small, isolated communities in the state, and the fact that without special considerations for the implementation of service, many of these Alaskan communities would be without off-the-air broadcast service as we know it in the lower 48 states. For these same reasons, waivers of our FM translator rules have often been granted.

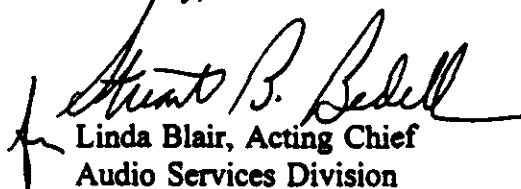
<sup>3</sup> Although Peninsula has previously been granted waivers under our Alaska policy exception, the underlying basis for these grants was our understanding that the subject translators would be providing service to small, isolated communities in Alaska that would otherwise be deprived of any radio service and that no existing or potential full service

mileage and population of these areas, and all radio services (AM, FM , and FM translators) already being received in these areas.

If Peninsula intends to demonstrate that all or part of these translator stations are providing fill-in service, it must provide a clearly labelled, composite map for each translator station. Each composite map should reflect the authorized service contour of the existing translator station and its location. This "Authorized Contour" should be based on the MERP and corresponding HAAT set forth in Sections 74.1235(b)(1) and (2) of the rules. The composite map should also reflect the primary service station's 60 dBu (1mV/m) service contour, with the fill-in area clearly labelled.

Accordingly, for the reasons stated above and pursuant to 47 C.F.R. Section 0.283, Peninsula Communications, Inc. IS DIRECTED TO SUBMIT THE REQUESTED INFORMATION IN WRITING within 30 days of the date of this letter. Failure to file the requested information within 30 days could result in dismissal of Peninsula's renewal applications, pursuant to 47 C.F.R. Section 73.3568(b).

Sincerely,

  
Linda Blair, Acting Chief  
Audio Services Division  
Mass Media Bureau

cc: Jeffrey D. Southmayd

n: . . .alaska.two

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stations would be affected. However, a recent examination of Peninsula's station files indicate that it may be serving well populated areas and that these areas may be better served by full service local broadcast stations. Additionally, Peninsula should be mindful that any existing waivers were granted before the new rules became fully effective. Hence, any waivers granted prior to June 1, 1994 must now be considered under the Commission's more restrictive ownership and support rules.

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3

FCC MAIL ROOM

SEP 13  
**Federal Communications Commission**  
**Washington, D.C. 20554**

September 11, 1996

IN REPLY REFER TO  
1800B4-AJS

Jeffrey D. Southmayd, Esq.  
Southmayd & Miller  
1220 19th Street, N.W.  
Suite 400  
Washington, D. C. 20036

In re: FM Translator Stations  
K257DB, Anchor Point/Seldovia, AK  
K265CK Kachemak City, AK  
K272CN Homer, AK  
K272DG and K285EG, Seward, AK  
K274AB and K285AA, Kodiak, AK  
K283AB, Soldotna, AK  
K285EF, Kenai, AK

Dear Counsel:

This letter concerns the nine above-captioned applications for renewal of translator stations licensed to Peninsula Communications, Inc. ("Peninsula"). Separate Petitions to Deny have been filed against six of these renewal applications: against K272DG, Seward and K285EG, Seward, by KSRM, Inc. ("KSRMI") and White Falcon Communications, Inc. ("White Falcon"); against K283AB, Soldotna and K285EF, Kenai, by KSRMI and King Broadcasters, Inc. ("King"); and against K274AB, Kodiak and K285AA, Kodiak, by Cobb Communications, Inc. ("Cobb"). Opposition and reply pleadings have also been filed by the respective parties.<sup>1</sup> The remaining three renewal applications for stations K257DB, Anchor Point, K265CK, Kachemak City, and K272CN, Homer, are uncontested. For the reasons stated below, we grant the petitions to deny to the extent indicated, defer action on the renewal applications and direct Peninsula to divest its ownership interests in these nine translator stations.

As set forth herein, we conclude that Peninsula has operated translator stations K257DB, K265CK, K272CN, K274AB, K283AB, K285AA, and K285EF, since June 1, 1994, in violation of Section 74.1232(d) of the Commission's Rules. That section provides that an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station being rebroadcast cannot be owned by the licensee or permittee of the commercial FM radio broadcast station, or by any person or entity having any interest in or connection

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<sup>1</sup> Peninsula filed a "Consolidated Opposition" to the various Petitions to Deny on April 3, 1996. Also included in Peninsula's Opposition was its response to a March 4, 1996, letter from the Acting Chief of the Audio Services Division, asking Peninsula to provide information concerning its continued ownership and operation of its non fill-in translators. Petitioners thereafter filed a "Consolidated Reply" to Peninsula's opposition.

whatsoever with the primary FM station.<sup>2</sup> However, because of the unique circumstances present here, we have determined that the appropriate sanction for these violations at this point is an admonition, not a monetary forfeiture or adverse action on the renewal applications.

### **Background**

Peninsula is the licensee of commercial FM stations KWVV-FM, Homer, Alaska, and KPEN-FM, Soldotna, Alaska, and of fill-in translator stations, K285DU, Homer, and K292ED, Kachemak City.<sup>3</sup> Peninsula is also the licensee of the above-captioned nine non fill-in translator stations that rebroadcast the signal of either KWVV-FM or KPEN-FM. As of June 1, 1994 Peninsula, absent a waiver of Section 74.1232(d), was required to divest its ownership interests in all non fill-in translator stations. Petitioners allege that Peninsula continues to operate its non fill-in translator stations in violation of Section 74.1232(d). They contend that any waivers of the Commission's former ownership rules are now invalid and any waivers of the revised ownership rules were issued in error and should not be extended.<sup>4</sup> Petitioners conclude that, because Peninsula has been operating its stations in violation of the Commission's rules, the renewal applications should not be granted. Peninsula, on the other hand, maintains that it has continuing waivers of the ownership rules.

To ascertain whether Peninsula is in fact operating its non fill-in translators pursuant to previously granted waivers of Section 74.1232(d) of the rules, it is necessary to review the status of Peninsula's current operating authority for each of these stations.

### **Stations K257DB, Anchor Point, K265CK, Kachemak City, and K272CN, Homer:**

Peninsula was granted authority to operate these three non fill-in stations under the former version of Section 74.1232(d), that is, prior to the time the new ownership rules were adopted (November

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<sup>2</sup> Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. 47 C. F. R. § 74.1232(d).

<sup>3</sup> "Fill-in translator" stations are those that provide service within the protected contour of the station being rebroadcast. A fill-in station's coverage contour cannot extend beyond the protected contour of the primary station being rebroadcast. Such fill-in stations can be owned by the licensees of the "primary" stations which are being rebroadcast by the translator stations. "Non fill-in translator" stations are those that serve areas beyond the protected contour of the primary station being rebroadcast. As stated in the text above, Section 74.1232(d) prohibits the licensees of commercial broadcast stations from owning or having any business relationship with non fill-in FM translator stations. In addition, Section 74.1232(e) of the rules prohibits primary stations from providing any financial support (other than technical assistance) to independently licensed non fill-in translator stations. The license renewal applications for Peninsula's two fill-in translator stations, K285DU and K292ED, were granted on March 28, 1996. See *Public Notice*, Report No. 43707, April 2, 1996.

<sup>4</sup> The previous, more lenient version of Section 74.1232(d) prohibited the licensee of an FM station from owning an FM translator station that provided reception to places located beyond the predicted 1 mV/m field strength contour of the primary station being rebroadcast and within the predicted 1 mV/m field strength contour of another commercial FM radio broadcast station assigned to a different community. As discussed below, Section 74.1232(d) was substantially revised to its present form, as summarized above in footnote 3, in 1990.

8, 1990) and went into effect (June 1, 1991).<sup>5</sup> Since these translator stations would be providing service within the 1 mV/m service contour of another commercial FM station, Peninsula, in filing its April 9, 1986 construction permit applications for these three stations, sought a waiver of the former version of Section 74.1232(d).<sup>6</sup> The respective construction permits were granted on June 26, 1986, without a specific ruling on Peninsula's waiver requests. An examination of the Commission's files for these stations shows that no requests for waiver of the Commission's current ownership rules have ever been filed. The renewal applications for these stations are uncontested.

#### **Station K285AA, Kodiak:**

This non fill-in station was originally licensed to Kodiak Community Church, Inc., which rebroadcast the signal of KWVV-FM, Homer, licensed to Peninsula. When Peninsula filed an assignment application to acquire the K285AA license on May 25, 1988, it did not request a waiver of Section 74.1232(d). An examination of the Commission's files for this station shows that no request for waiver of the Commission's current ownership rules has ever been filed. The renewal application for this station is contested.

#### **Stations K283AB, Soldotna, and K274AB, Kodiak:**

Peninsula was granted authority to operate these two non fill-in stations under the former version of 74.1232(d), prior to the time the new ownership rules were adopted and went into effect. In filing its April 14, 1982 construction permit application for K283AB, Peninsula sought a waiver of former section 74.1232(d). It repeated its waiver request as part of a supplement to its application filed in April, 1983.<sup>7</sup> The construction permit for K283AB was subsequently issued on April 13, 1984, without a specific ruling on Peninsula's waiver request.

Peninsula's original construction permit application for K274AB was filed on April 10, 1984. In its application, Peninsula requested authority to rebroadcast the signal of its AM station KGTL, Homer. Since Peninsula would not be using its translator to rebroadcast the signal of a commonly owned FM station, no waiver of Section 74.1232(d) was required. After its original construction permit was issued, Peninsula filed an application to change the station it was

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<sup>5</sup> *The Report and Order* adopting the new rules indicated that the effective date would be March 1, 1991. However, this date was subsequently changed to June 1, 1991. See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212 (1990) ("Report and Order"), modified, 6 FCC Rcd 2334 (1991), recon. denied, 8 FCC Rcd 5093 (1993) ("Reconsideration Order").

<sup>6</sup> See note 4, *supra*.

<sup>7</sup> The basis for Peninsula's waiver request was the general lack of service in the Kenai and Soldotna areas and in furtherance of "the Commission's long-standing policy of supporting the maximum number of broadcast voices in any community, including FM translators." (Exhibit I to Peninsula's supplement). The supplement was filed in response to a staff deficiency letter dated October 19, 1982. Both the deficiency letter and the response reflect the specific content of former Section 74.1232(d). See footnote 4, *supra*. Included in the deficiency letter was the statement that "Location of [the] proposed translator within KQOK [sic] 1 mv/M contour, in contravention of Rules Section 74.1232, would place your proposal in jeopardy should KQOK object either before or after construction." (Emphasis in original). KQOK was a commercial station licensed to serve Kenai.

rebroadcasting to commonly owned FM station, KPEN-FM, Soldotna. At that time, Peninsula did not seek a waiver of Section 74.1232(d) to allow it to own this non fill-in translator station. The construction permit authorizing a change in the station being rebroadcast was granted on July 24, 1986.

On May 13, 1991, Peninsula filed applications to make major changes in the K283AB and K274AB facilities.<sup>8</sup> In his transmittal letters, Peninsula's attorney requested a waiver of the then existing freeze on the acceptance of new and major change applications for FM translator stations.<sup>9</sup> However, he did not request any specific waivers of the Commission's revised ownership rules. The construction permits for major changes to existing stations K283AB, Soldotna, and K274AB, Kodiak, were subsequently issued on September 6, 1991. The renewal applications for these stations are contested.

#### **Station K285EF, Kenai:**

The construction permit application for this new, non fill-in station was also filed on May 13, 1991. As with the applications filed for K283AB and K274AB, Peninsula's attorney requested in his transmittal letter a waiver of the then existing freeze on the acceptance of new and major change applications for FM translator stations.<sup>10</sup> However, he did not request any specific waivers of the Commission's revised ownership rules. The construction permit for this new station was granted on September 6, 1991. The renewal application for this station is contested.

#### **Stations K272DG and K285EG, Seward:**

The construction permit applications for these two new non fill-in stations were similarly filed on May 13, 1991, with transmittal letters identical to those described above.<sup>11</sup> As with its other applications filed on May 13, 1991, Peninsula's attorney did not request any specific waivers of the Commission's revised ownership rules. By letter dated February 18, 1992, the staff granted

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<sup>8</sup> These major modification applications sought to change the transmitting frequencies for these stations, and did not propose any change in either the transmitter location, the area that would receive service, or the primary station retransmitted.

<sup>9</sup> As stated in each of the separate transmittal letters: "Peninsula hereby respectfully requests a waiver of the Commission's rules and policies to allow for the filing and acceptance of this application in advance of the lifting of the freeze. . . . The Commission has long recognized the need for additional broadcast services in the State of Alaska. This need has evolved into a policy of granting liberal waivers of the Commission's FM translators and major changes in facilities of existing stations. See Wrangell Radio Group, 75 FCC 2d 404 (1979)." In Wrangell Radio Group, 75 FCC 2d 404 (1979), the Commission waived the rule requiring TV translators to retransmit only stations received over the air and granted applications proposing satellite-fed TV translators in seven Alaska communities. The Commission based its decision on the need for additional over-the-air broadcast signals to serve small, isolated communities in the state, and the fact that without special considerations for the implementation of service, many of these Alaskan communities would be without off-the-air broadcast service as we know it in the lower 48 states.

<sup>10</sup> See footnote 9, *supra*.

<sup>11</sup> See footnote 9, *supra*.



the requested construction permits. (See letter from Chief, Auxiliary Services Branch, to Peninsula Communications, Inc., dated February 18, 1992). In granting these permits, the staff, *sua sponte*, concluded that waiver of revised Section 74.1232(d) was needed and granted a waiver in view of the Commission's "special concern for the availability of broadcast services in Alaska and the number of people who will receive full-service programming from the translator . . . ." The renewal applications for these stations are contested.

To summarize, over the years the staff has granted Peninsula authority to construct a number of non fill-in translator stations. The current authorizations for four of these stations (K257DB, Anchor Point, K265CK, Kachemak City, K272CN, Homer and K285AA, Kodiak) were issued during the 1980's, prior to the Commission's revision of the translator ownership rules in 1990. For three of these four stations (K257DB, K265CK, and K272CN), Peninsula requested a waiver of former Section 74.1232(d). For the fourth station (K285AA) Peninsula did not seek any waiver. The most recent construction permits and licenses for the five remaining non fill-in stations (K283AB, Soldotna, K274AB, Kodiak, K285EF, Kenai, K272DG, Seward, and K285EG, Seward) were granted following adoption of the revised rules. For these five stations, Peninsula's attorney submitted a cover letter requesting waiver of the existing processing freeze but made no specific request for waiver of the revised ownership rules. Despite the absence of a waiver request, the staff, on its own motion, issued a letter ruling specifically waiving revised Section 74.1232(d) for the two new translator stations serving Seward.

#### Discussion

The issue before the staff is whether the renewal applications for Peninsula's nine non fill-in translator stations can now be granted. In resolving this issue, we must first determine whether, for each station, Peninsula has previously obtained a waiver of the current translator ownership rule, 47 C.F.R. § 74.1232(d); second, where Peninsula has previously obtained a waiver, whether continuation of the waiver would serve the public interest; and third, where Peninsula has not previously obtained a waiver, whether a grant of one in the first instance would serve the public interest.

**Status of Previous Waivers.** With respect first to whether the non fill-in translators have been operating in compliance with Section 74.1232(d) since June 1, 1994, Peninsula maintains in its renewal applications that in approving the original construction permit and license applications for each translator, the Commission in each case effectively granted Peninsula a waiver of Sections 74.1232(d) and (e) of the rules, and that, by virtue of those waivers, "Peninsula is authorized . . . to operate the translator[s] in the present mode." Peninsula therefore maintains that it is not in violation of the Commission's rules and that its renewal applications are grantable. We disagree that Peninsula has been granted, in essence, continuing waivers of the ownership rules that permit it to operate all of these translators contrary to the provisions of current Section 74.1232(d) and (e)<sup>12</sup> of the rules.

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<sup>12</sup> We need not address Peninsula's suggestion that the Commission did or should waive subpart (e) of Section 74.1232 in addition to subpart (d). Subpart (e), which prohibits a primary station from providing financial support to an independently owned non fill-in translator rebroadcasting that primary station, is relevant only where there is no common ownership or other direct affiliation between the primary station and the non fill-in translator, which is otherwise directly prohibited by subpart (d). The translators at issue are now owned by Peninsula, and are thus

With respect to the first group of three translator stations listed above -- K257DB, Anchor Point, K265CK, Kachemak City, and K272CN, Homer -- Peninsula had only requested waivers of *previous* Section 74.1232(d) in 1986.<sup>13</sup> and had never, prior to the divestiture deadline of June 1, 1994, requested a waiver of the substantially revised Section 74.1232. As set forth in footnote 4, *supra*, the 1990 revision of the translator ownership rules made fundamental changes in circumstances under which a primary station could own a translator operating beyond the primary station's service area. Under former Section 74.1232(d), a primary station could own a translator that provided reception to areas located beyond the predicted 1 mV/m predicted service contour of the primary station as long as there was no reception within the 1 mV/m predicted service contour of another commercial FM station licensed to a different community. But in adopting the revised rules, the Commission narrowed this standard in concluding that a broadcast station licensee should not own or support a translator station that extends the primary station's service area beyond that of the primary station, because of the detrimental effect such combined ownership would have on the development and continuation of full service FM stations. *Report and Order, supra*, 5 FCC Rcd at 7215. The new rule thus required primary stations to sever ownership and other relationships with translators that were not in compliance with the new standard. However, realizing that rapid compliance could result in disruption of service to the public, the Commission afforded existing FM translator operators three years to come into compliance with the new ownership rules, that is, until June 1, 1994. Thereafter, any non fill-in FM translator stations had to be owned by independent parties. The Commission indicated that extended waivers of the divestiture requirement would be granted only in those situations involving "white areas," *i.e.*, areas outside the coverage of any full time aural service. *Id.* at 7216.

In view of this major change in the substantive provisions of Section 74.1232(d) and in the stated standards for waiver of the new rule, it could not ordinarily be concluded that the waivers requested by Peninsula in 1986 of the *previous* version of Section 73.1232(d) would continue to be effective after the revision of that rule in 1990. With respect to the fourth translator listed above which Peninsula acquired prior to 1990 without further modification -- K285AA, Kodiak - Peninsula never requested a waiver of even the previous version of Section 74.1232(d). However, in light of staff action regarding other similarly situated Peninsula translators, described *infra*, we believe that Peninsula could have reasonably, albeit mistakenly, believed that the provisions of revised Section 74.1232(d) had been implicitly waived for stations K257DB, K265CK, K272CN, and K285AA.

With respect to the two translators which were initially licensed prior to 1990 but for which Peninsula filed major modification applications in 1991 -- K283AB, Soldotna, and K274AB, Kodiak -- Peninsula requested waiver of *previous* Section 74.1232(d) for K283AB and made no waiver request for station K274AB, Kodiak. The original construction permit applications for both stations were granted without any reference to a waiver. In any event, as with the four translators discussed immediately above, whether the previous version of Section 74.1232(d) was waived prior to 1990 is not relevant in view of the substantial revision of that rule and of the

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governed by the prohibitions of subpart (d), not (e).

<sup>13</sup> These applications were granted without express rulings on the waiver requests.

standards for waiver of the revised rule. Further, when Peninsula filed applications on May 13, 1991 (prior to the June 1, 1991, effective date for revised Section 74.1232(d)), for major modification of these two translators, it did not request a waiver of Section 74.1232(d) of the rules. As noted, contrary to Peninsula's response in its Consolidated Opposition,<sup>14</sup> the transmittal letters filed with the 1991 applications made no specific mention of any rules and policies in the *Report and Order* adopting the revised translator rules, but rather requested a waiver of the then existing freeze on the processing of certain translator applications.<sup>15</sup> Regarding the ownership restrictions, the letters cannot be construed as meeting the requirement that applicants plead with particularity the facts and circumstances which warrant waiver. See *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968).<sup>16</sup> Nonetheless, in light of the fact that the staff granted the modification applications without requiring Peninsula to submit a showing that it was in compliance with the revised Section 74.1232(d) and in light of the fact that the staff subsequently *sua sponte* waived that rule for Peninsula under similar circumstances, see *infra*, we conclude that Peninsula could have reasonably, albeit mistakenly, believed that the staff had implicitly waived the provisions of revised Section 74.1232(d) for these stations.

We reach this same conclusion regarding Station K285EF, Kenai. The construction permit application for this new station was also filed on May 13, 1991, and, as with the two translators discussed above that were the subject of major modification applications filed that same day, the cover letter for this new station application requested a waiver only of the then existing freeze on the filing of new and major change applications. As with these modification applications, this new station application did not indicate that this was a non fill-in translator for which a waiver of revised Section 74.1232(d) was necessary. Nonetheless, the new permit was granted on September 9, 1991, without any reference to revised Section 74.1232(d).

The circumstances are different for the remaining two non fill-in translators -- K272DG and K285EG, Seward. The initial construction permit applications for these two translators were filed the same day as the K285EF, Kenai application discussed in the previous paragraph, and contained the identical request for waiver only of the filing freeze with no reference to compliance with or waiver of revised Section 74.1232(d). However, in the case of these two translators, the staff determined that they were indeed non fill-in translators for which a waiver of Section 74.1232(d) was necessary, and the staff, *sua sponte*, waived the rule in its February 18, 1992, letter ruling.

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<sup>14</sup> Peninsula asserted in its Opposition pleading that "The transmittal letter accompanying each of the aforesaid applications specifically requested a waiver of the Commission's rules and policies, including those recently adopted in the Report & Order, based on the Commission's "Alaska Exception" established under Wrangell Radio Group, supra." See footnote 9, *supra*.

<sup>15</sup> See footnote 9, *supra*.

<sup>16</sup> In response to the question on the then-existing version of the application form as to whether the translator was commonly owned with the primary station (Section IV, Question 3), Peninsula provided an exhibit (A-6 in the case of K283AB) stating in its entirety as follows: "Peninsula Communications, Inc. is both the licensee of the station to be rebroadcast (KWVV-FM) and the applicant."

**Prospective Waiver of Section 74.1232(d).** Next, we must determine whether it is appropriate now to grant a waiver of Section 74.1232(d) of the rules to allow Peninsula to own the seven translators for which this rule was not previously waived and to continue in effect the waivers that were previously granted *sua sponte* concerning the two Seward stations, so that Peninsula can continue to own those stations. With respect to the latter, we note that because public interest considerations change over the years, what may have been relevant considerations in the past, when an original authorization was granted, may no longer be controlling. Cf. *American Broadcasting Cos., Inc.*, 35 FCC 2d 1, 12, (1972), *aff'd per curiam*, *American Broadcasting Cos., Inc. v. FCC*, No. 72-1612 (D.C. Cir., Dec. 27, 1972), *cert. denied*, 412 U.S. 939 (1973). Indeed, the translator rules themselves, both before the 1990 revision of the rules and after, provide that where circumstances thought to justify a waiver of Section 74.1232(d) change, a waiver of that rule may be rescinded. Specifically, Section 74.1232(h) (formerly Section 74.1232(g)) of the Commission's rules provides that any translator authorization previously granted pursuant to Section 74.1232(d) can be terminated with 60 days notice "where the circumstances in the community or area served are so altered as to have prohibited grant of the application had such circumstances existed at the time of its filing." Thus even in the case of the two Seward translators where a waiver of revised Section 74.1232(d) was granted, the occasion of the renewal of these two stations' licenses is an appropriate time to reexamine the appropriateness of such a waiver for the future.

In determining whether waivers of Section 74.1232(d) should be granted for the nine non fill-in translators here at issue, we must make a determination whether the public interest would best be served by grant of such waivers, in light of the standards set forth when the Commission modified its translator rules. In doing so the staff is guided by the strong and unequivocal pronouncements in the Commission's *Report and Order* adopting the new rules that permanent waivers of the FM translator ownership restrictions would undermine its stated policy in imposing new FM translator eligibility rules. The Commission determined that, "the most appropriate and efficient means of providing additional FM service nationwide is by creating opportunities for the establishment and development of full-service FM stations. We believe that a modification of our rules to permit the expansion of FM service through the use of translators would be inconsistent with our basic FM allotment scheme." *Report and Order, supra*, 5 FCC Rcd at 7215. In this regard the Commission stated that:

in situations where a licensee establishes that [full-time aural] service is indeed unavailable, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. Within the context of this proceeding, we will define a "white area" as any area outside the coverage contour of any full-time aural service. We emphasize that in order for commercial primary stations to own translators in such areas, the Commission will require a showing of a lack of service in accordance with the "white area" definition given above.

*Report and Order*, 5 FCC Rcd at 7216.

As noted above, the Commission afforded existing FM translator operators three years to come into compliance with the new ownership and support rules, that is, until June 1, 1994. Thereafter, non fill-in FM translator stations had to be owned by independent parties.

On reconsideration, the Commission affirmed that "an indefinite grandfathering period would undermine the effectiveness of the new rules in returning the FM translator service to its original secondary role." *Reconsideration Order, supra*, 8 FCC Rcd at 5100. Of particular relevance here, the Commission expressly rejected the contention that waiver of the ownership restrictions could be based either on the provision of a second service to "gray" areas or the provision of an additional service to an "underserved" area. *See Reconsideration Order, supra*, 8 FCC Rcd at 5094-5.

Under these circumstances, neither continuation of the ownership waivers previously granted to Peninsula's two Seward translators, nor a grant of waivers in the first instance to the seven other translators, is warranted.<sup>17</sup> We acknowledge that "special treatment" has sometimes been accorded FM translators located in Alaska, including occasional waivers of the ownership provisions such as those *sua sponte* granted for the two Seward stations.<sup>18</sup> However, considering the policy basis underlying the new rule, the waiver standards enunciated in the proceeding adopting the rule, and the lack of any language in the *Report and Order* indicating that a special exception should be made for Alaska translators, we cannot conclude that such exception is warranted.<sup>19</sup> As a result, Peninsula must come into compliance with the revised ownership and support provisions of our rules. We will not, however, impose a monetary forfeiture on Peninsula or take adverse action against Peninsula's renewal applications at this time. As demonstrated above, treatment of Peninsula's various translator applications has not been entirely consistent, nor the reasons underlying various actions explicitly stated. Under those circumstances, we do not believe a fine or immediate adverse action against the renewal applications would be equitable.

Although we are directing Peninsula to divest itself of its ownership interests in all non fill-in translators, the result need not be the termination of service provided by these licensed translator stations. Citizens groups, governmental entities, or other bona fide, unconnected parties are allowed to purchase Peninsula's translators. However, such buyers cannot have any interest in or connection with Peninsula and the new owner must be free (1) to change the primary station it is rebroadcasting at any time, without fear of reprisal, (2) to assign the license to another bona

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<sup>17</sup> Cf. *Kevin C. Boyle, Esq.*, 11 FCC Rcd. 2348 (Audio Services Div, MMB, 1996), where the Audio Services Division recently denied a request for waiver of Section 74.1232(d) for four existing translator stations providing service to non fill-in areas. Additionally, the current situation parallels that before the Commission in *American Broadcasting Cos., Inc.*, *supra*, 35 FCC 2d 1, 12. There, as in the instant case, new full service stations had filed petitions to deny the renewals of existing authorized operations, these full service stations were capable of meeting the needs and interests of their communities more effectively, and denying the renewals would further a Commission policy (in the present case, that of encouraging the use of full service FM stations to meet the needs of the affected communities instead of FM translator stations).


<sup>18</sup> Indeed, an earlier letter in this proceeding reflected that practice. *See Letter from the Acting Chief, Audio Services Division, to Peninsula Communications, Inc.*, dated March 4, 1996.

<sup>19</sup> The portion of the *Report and Order* which Peninsula cites in support of its assertion that "special treatment" should be accorded Alaskan broadcast stations, referred only to waiver of the Commission's technical rules, i.e., those governing program origination, alternative signal delivery, and cross-service translating. *Report and Order, supra*, 5 FCC Rcd at 7245, n.59. There is no discussion of waiving any of the Commission's ownership rules, other than to allow for service to white areas. Moreover, the case upon which Peninsula places primary reliance, *Wrangell, supra*, 75 FCC 2d 404, is inapposite, because it is concerned only with waiver of the signal delivery rule.

vide purchaser, upon Commission approval, and (3) to terminate operation of these translators, upon proper notification to the Commission. See 47 C.F.R. § 74.1263. We will defer action on Peninsula's renewal of license applications for a period of 60 days from the date of this letter, during which time Peninsula may file applications to assign the relevant licenses to unaffiliated parties in compliance with sections 74.1232(d) and (e) of the rules. If the assignment applications are granted, the license renewal applications will be granted conditioned upon consummation of the assignments. If an application for any non-complying translator is not filed within this 60 day period, we will take appropriate action against the renewal application.

Accordingly, for the reasons stated above, the Petitions to Deny filed by KSRM, Inc., King Broadcasters, Inc., White Falcon Communications, Inc., and Cobb Communications, Inc. ARE GRANTED to the extent indicated and denied in all other respects. It is further ordered that the applications for renewal of the licenses for FM Translator stations K257DB, Anchor Point, Alaska (BRFT-951124ZF); K265CK, Kachemak City, Alaska (BRFT-951124ZE); K272CN, Homer, Alaska (BRFT-951124YW); K272DG, Seward, Alaska (BRFT-951124ZG); K274AB, Kodiak, Alaska (BRFT-951124ZH); K283AB, Soldotna, Alaska (BRFT-951124YU); K285AA, Kodiak, Alaska (BRFT-951124JZ); K285EF, Kenai, Alaska (BRFT-951124UT), K285EG, Seward, Alaska (BRFT-951124ZK) ARE DEFERRED for a period of sixty (60) days from the date of this letter, during which time Peninsula must file applications to assign the relevant licenses to unaffiliated parties in compliance with Section 73.1232(d) of the rules. If the assignment applications are granted, the license renewal applications will be granted conditioned upon consummation of the assignments. If an assignment application for any non-complying translator is not filed within this 60 day period, we will take appropriate action regarding the renewal application of that station.

Sincerely,

  
Linda Blair, Chief  
Audio Services Division  
Mass Media Bureau

cc: David Tillotson  
Peter Gutmann